

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	2:06cr222-WKW
)	
JELA SHERMAKIE MARSHALL)	

OBJECTIONS TO RECOMMENDATION OF MAGISTRATE JUDGE

Comes now the Defendant, Jela Shermakie Marshal, by and through Kevin L. Butler, Esq., and submits the following Objections to the Recommendation of the Magistrate Judge.

In his Recommendation, the Magistrate Judge correctly identifies and discusses the legal principles that must guide a determination/analysis of whether the stop of the vehicle was appropriate. The Court then thoroughly reviews and discusses the evidence and testimony prior to finding credible the testimony of Officer Barnes. Specifically, that Officer Barnes stopped the vehicle after he heard and observed the vehicle violating a local noise ordinance. However, because the large speaker in the car was not working (T. - 67-71; 83-87) and the “factory” stereo system was not capable of producing the noise volume necessary for the car to violate the ordinance which gave cause for the vehicle stop, (T. - 88), the defense believes the Court’s credibility determination is erroneous.

The defense renews its request to have the Court conduct an independent examination through a demonstrative exhibition of the sound that can be produced by the vehicle. Whether a vehicle can produce noise that can carry 200-250 feet is not an issue that requires expert testimony. Like sight, taste and feel, these are matters that any human can observe. Though defense does not believe requesting the Court to conduct a hearing/volume test amounted to “surprise” expert testimony, it

will make the vehicle available to the government for inspection prior to the test. Upon completion of this inspection, after a demonstrative exhibition, the Court will be capable of then assessing the volume that can be produced. The defense believes that upon hearing the stereo in the vehicle, the Court will determine that Officer Barnes' testimony was not credible and there was not cause to stop the vehicle.

Dated this 22th day of December 2006.

Respectfully submitted,

s/ Kevin L. Butler
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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Verne Speirs, Esquire
Assistant United States Attorney
One Court Square, Suite 201
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Respectfully submitted,

s/ Kevin L. Butler
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